

Appln No. 10/816,650
Amdt date September 12, 2005
Reply to Office action of July 15, 2005

REMARKS/ARGUMENTS

Claims 1-23 are pending in the above-referenced matter.

Claims 1, 4, 8-15, and 17-19 have been amended and claims 21-23 added to further define Applicants' invention.

This is a response to the Final Office Action dated July 15, 2005 wherein the Examiner rejected claims 4 under §112, 2nd paragraph; rejected claims 1, 2, 5, 8-10, 14-18, and 20 under §102(b) for being anticipated by Thaler et al. (US 6,378,461); rejected claims 6, 7, and 11 under §103(a) for obviousness over Thaler et al. in view of Springer (US 4,858,561) and Official Notice; rejected claims 3, 4, 12, 13, and 19 under §103(a) for obviousness over Thaler et al. in view of Walter (US 5,713,302); and rejected claims 14-18 and 20 under §102/103(a) by Thaler et al. and/or Thaler et al. in view of ordinary knowledge in the art.

Initially, Applicants wish to express their extreme displeasure at having to deal with a Final Action in light of the prior Action in which a non-relevant primary reference (Northrop et al., Pub. No. US2003/0217700) was cited and which does not disclose a tray slidably coupled to a chassis while having an enclosure mounted thereto. The Amendment made after a telephone interview with the Examiner was made merely to define the word "slidably", which Northrop et al. do not disclose in combination with an enclosure. Applicants believe that the Examiner is taking advantage of her position in issuing the current Final Action while cloaking her decision on "Applicant's amendment" being the reason. However, to advance prosecution, Applicants have decided to begrudgingly proceed under an RCE.

§112, 2nd Paragraph Rejection of Claim 4

Claim 4 is rejected for indefiniteness for erroneously depending on itself. In response thereto, claim 4 has been amended.

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§102(b) Rejection of Claims 1, 2, 5, 8-10, 14-18, and 20

Claims 1, 2, 5, 8-10, 14-18, and 20 have been rejected under §102(b) for being anticipated by Thaler et al. Of the rejected claims, claims 1, 8, and 14 are independent claims.

The Examiner contends that Thaler et al. disclose:

an enclosed litter box comprising a chassis (502) comprising an end opening comprising an end edge; a removable litter tray (20) comprising a first end and a second end slidably coupled to the chassis such that the first end moves away from the end edge while the second end moves closer to the end edge when the tray is moved relative to the end opening (it is noted that Thaler et al.'s tray is capable of being moved relative to the end opening such that the first end moves away from the end edge while the second end moves closer to the end edge. Further, note that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finstenwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647; and MPEP 2114 & 2115); a manual rake (41, 44) located within the removable litter tray; and an enclosure (550, 548) mounted to the chassis enclosing the removable litter tray and rake.

Applicants do not dispute the Examiner's characterization of Thaler et al. but wish to add that the Thaler et al. litter box 20 (i.e., removable litter tray) comprises a receptacle 68 hidden behind a hinged lid 69 (FIG. 1), a separate tray portion 304 (FIGs. 7 and 16-18), and wherein the entire litter box 20 is configured to fit into a housing 500 having an end wall 506 (FIG. 25), as shown in FIG. 28. The litter box 20 is mounted so that the storage end wall 25 having a motor 55 (FIG. 1) is positioned adjacent the end wall 506 of the housing 500 (FIG. 25).

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As shown in FIGs. 16-18 of the '461 Thaler et al. reference, the removable tray 304 is designed to be slid through the opening at the storage end wall 25. In other words, the tray 304 slides out of an opening at the end where the rake having a plurality of tines 44 (FIG. 1) is located. Because of the location of the receptacle 68, the tray 304 cannot slide out through the discharge end 24 (FIG. 1).

Independent claim 1 has been amended to recite, in part, an enclosed litter box comprising a chassis, a removable litter tray comprising a first position, a second position, a first end, and a second end such that the first end is closer to the end wall of the chassis than the second end when the litter tray is in the first position inside the chassis before sliding to a second position; a rake comprising a raking end having a plurality of tines and a handle end wherein the raking end is located within the removable litter tray with the raking end closer to the end wall of the chassis than the end opening of the chassis when the litter is in the first position; and wherein the second position is characterized by the first end of the litter tray and the raking end of the rake both spaced apart from the end wall of the chassis.

Applicants submit that Thaler et al. do not disclose an enclosed litter box as recited. In fact, Applicants submit that Thaler et al. disclose a litter box which has an entirely different configuration, one in which the removable tray is oriented differently thus producing a different second position in combination with a rake than the tray recited in claim 1. For example, to pull the tray 304 from the box disclosed by Thaler et al., the litter box 20 must first be removed from the housing 500 so that the tray 304 can be accessed. Claim 1 also recites a rake wherein the raking end is located within the removable litter tray with the raking end closer to the end wall of the chassis than the end opening of the chassis when the litter tray is in the first position. Reconsideration and a notice of allowance are respectfully requested.

Because claims 2 and 5 depend from independent claim 1, they too are allowable for at least the same reasons as discussed above for the allowance of claim 1.

Independent claim 8 has been amended to recite, in part, an enclosed litter box, comprising: a chassis; a slidably removable litter tray positioned in the chassis; said slidably removable litter tray comprising a groove defining a catch channel; a rake comprising a raking

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end and a handle end such that a plurality of tines are located within the tray cavity of the litter tray while the handle portion is engaged to the catch channel, and wherein the raking end of the rake is positioned proximate the end wall of the chassis and the handle portion is positioned proximate the end opening of the chassis.

Applicants submit that Thaler et al. do not disclose an enclosed litter box as claimed in independent 8. Among other things, Thaler et al. disclose an automatic raking system which uses a motor 55 to move the rake (FIG. 1). Thus, the rake disclosed by Thaler et al. do not incorporate a handle end or a handle portion for handling. Further more, Thaler et al. do not disclose a groove defining a catch channel, a handle portion engaged to the catch channel, or a handle portion positioned proximate an end opening of the chassis. Reconsideration and a notice of allowance are respectfully requested.

Because claims 9 and 10 depend from independent claim 8, they too are allowable for at least the same reasons as discussed above for the allowance of claim 8.

Independent claim 14 has been amended to recite, in part, an enclosed litter box, comprising: a chassis; a removable litter tray positioned in the chassis; a rake comprising a raking end for raking litter comprising at least two tines spaced apart from one another by a first gap and a handle end positioned in the litter tray; a scooper comprising a scooper handle portion for handling and a scooping portion for scooping comprising at least two indentations defining at least two notches spaced apart from one another by second gap; wherein the first gap and the second gap are generally equal to one another so that the at least two notches align with the at least two tines to enable the at least two indentations to contact the at least two tines to scrape the at least two tines when cleaning the rake.

Applicants submit that Thaler et al. do not disclose an enclosed litter box as recited in claim 14. Among other things, Thaler et al. do not disclose a scooper or a scooper comprising at least two notches having a gap that aligns with a gap between at least two tines on the rake to clean the at least two tines with the scooper. Reconsideration and a notice of allowance are respectfully requested.

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Because claims 15-18 and 20 depend from independent claim 14, they too are allowable for at least the same reasons as discussed above for the allowance of claim 14.

§103(a) Rejection of Claims 6, 7, and 11 by
Thaler et al. in view of Springer and Official Notice

In rejecting claims 6, 7, and 11, the Examiner relied on Springer to teach an outer cover with an attractive appearance and on Official Notice for adhesive use. Claims 6 and 7 depend from claim 1 while claim 11 depends from claim 8.

While not conceding that the references are combinable or that Official Notice is appropriate in this instance, Applicants submit that neither Springer or the Official Notice relates to changing how the tray disclosed by Thaler et al. is orientated or the way it seats in a second position to enable removal of the tray without first removing the enclosure. Moreover, claim 1 recites a rake wherein the raking end is located within the removable litter tray with the raking end closer to the end wall of the chassis than the end opening of the chassis when the litter tray is in the first position. Accordingly, the combination of Thaler et al. in view of Springer and Official Notice does not render claim 1 obvious or claims 6 and 7, which depend from claim 1, obvious.

Claim 11 depends from claim 8. As discussed above, Thaler et al. disclose an automatic raking system which uses a motor 55 to move the rake (FIG. 1). Thus, the rake disclosed by Thaler et al. do not incorporate a handle end or a handle portion for handling. Further more, Thaler et al. do not disclose a groove defining a catch channel on a tray, a handle portion engaged to the catch channel, or a handle portion positioned proximate an end opening of the chassis as recited in claim 8. Accordingly, because Springer and the Official Notice do not make up for Thaler et al., claim 8 is not rendered obvious, or claim 11, which depends from claim 8, obvious.

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§103(a) Rejection of Claims 3, 4, 12, 13, and 19 by Thaler et al. in view of Walter

In rejecting claims 3, 4, 12, 13, and 19, the Examiner relied on Walter to disclose a notched recess/gravity lock means (72) for engaging/attaching a notched blade scoop means thereon. Of the rejected claims, claims 3 and 4 depend from independent claim 1, claims 12 and 13 depend from independent claim 8, and claim 19 depends from independent claim 14.

Because Walter is relied on for disclosing a notch and a scoop means, Thaler et al. in combination with Walter does not disclose: (1) a tray orientation and a second position as recited in independent claim 1; (2) a rake having a handle end, a handle portion, a groove defining a catch channel, a handle portion engaged to the catch channel, and a handle portion on a rake positioned proximate an end opening of the chassis as recited in independent claim 8; or (3) a scooper or a scooper comprising at least two notches having a gap that aligns with a gap on at least two tines on the rake to clean the at least two tines with the scooper as recited in independent claim 14. Accordingly, claims 3, 4, 12, 13, and 19, which depend from independent claim 1, 8, or 14, are allowable over Thaler et al. in view of Walter.

§102/103(a) Rejection of Claims 14-18 and 20 by Thaler et al. and/or Thaler et al. in view of

Ordinary Knowledge in the art

In rejecting claims 14-18 and 20, the Examiner contends that Thaler et al. disclose a tray that has a first position and a second position as recited in independent claim 14, or alternatively is capable of sliding from a first position to a second position.

Independent claim 14 has been amended as indicated above to recite a scooper and a rake, and alignment between the at least two tines on the rake and the at least two notches on the scooper for cleaning the rake using the scooper. Because of the amendment, the present rejection is no longer appropriate. Reconsideration and a notice thereof are respectfully requested.


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New Claims 21-23

New claims 21-23 include independent claim 21. Applicants submit that new claims 21-23 are novel and not obvious in view of the cited references. Among other things, independent claim 21 recites an enclosed litter box, comprising: an enclosure coupled to the chassis for enclosing the removable litter tray comprising a notch recess comprising two notch surfaces that are non-parallel to one another; a scoop for scooping comprising a scooping end and a handle end comprising a hook portion; and wherein the hook portion of the scoop is engaged to the notch recess on the enclosure such that the handle end is elevated above the scooping end. These limitations are not found in any of the art of record.

In view of the amendments and remarks as set forth above, the application is thought to be in condition for allowance and early notice thereof is respectfully solicited. In the event the Examiner believes otherwise, Applicants respectfully request a formal telephone interview before the next Action to review the '461 Thaler et al. reference and the pending claims as this opinion would clearly show a misunderstanding by one or the other party of either the teachings of the '461 patent and/or the scope of the claims. Applicants' attorney can be reached by contacting the undersigned at the telephone number identified below.

Respectfully submitted,
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